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 United States of America

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF CALIFORNIA

UNITED STATES OF AMERICA,	)	Criminal Case No. 08CR1261LAB
)	
Plaintiff,	)	DATE: June 2, 2008
	)	TIME: 2:00 p.m.
v.	)	Before Honorable Larry A. Burns
)	
MARTIN OROSCO-IBARRA,	)	UNITED STATES' MOTIONS FOR:
)	
Defendant(s).	)	(1) RECIPROCAL DISCOVERY
	)	(2) FINGERPRINT EXEMPLARS;
	)	AND
	)	(3) LEAVE TO FILE FURTHER
	)	MOTIONS
)	
	)	TOGETHER WITH STATEMENT OF
	)	FACTS AND MEMORANDUM
	)	OF POINTS AND AUTHORITIES

COMES NOW the plaintiff, UNITED STATES OF AMERICA, by and through its counsel,
 Karen P. Hewitt, United States Attorney, and Aaron B. Clark, Assistant U.S. Attorney, and hereby
 files its Motions in the above-referenced case. Said Motions are based upon the files and records
 of this case together with the attached statement of facts and memorandum of points and
 authorities.

1 DATED: May 12, 2008.

2 Respectfully submitted,

3 KAREN P. HEWITT
4 United States Attorney

5 s/ Aaron B. Clark
6 AARON B. CLARK
7 Assistant United States Attorney
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MARTIN OROSCO-IBARRA,)	UNITED STATES' STATEMENT OF
)	FACTS AND MEMORANDUM OF
Defendant(s).)	POINTS AND AUTHORITIES
_____)	

I

STATEMENT OF THE CASE

On April 22, 2008, a federal grand jury in the Southern District of California returned a true bill of Indictment charging Martin Orosco-Ibarra ("Defendant") with one count of Attempted Entry After Deportation in violation of Title 8, United States Code, § 1326(a) and (b). Defendant was arraigned on the indictment on April 22, 2008 and entered a plea of "not guilty."

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II

STATEMENT OF FACTS**A. IMMIGRATION HISTORY**

Defendant is a Mexican citizen who was ordered removed by an immigration judge on August 6, 1996. Defendant has also been physically removed from the United States on numerous occasions. His latest removal occurred on February 5, 2008, by foot, through the San Ysidro, California Port of Entry.

B. RAP SHEET SUMMARY CHART

CONVICT DATE	COURT OF CONVICTION	CHARGE	TERM
1-29-07	CASC Tulare	HS 11550 – Under Infl. Cntl. Sub.	5 years prob.
12-27-06	CASC Tulare	HS 11377(a) – Poss. Cntl. Sub.	16 months
10-21-05	CASC Tulare	HS 11377(a) – Poss. Cntl. Sub.	3 years prob.
5-14-04	USDC AZ	8 U.S.C. 1325 (M) – Illegal Entry	120 Days
5-3-04	CASC Visalia	HS 11379(a) – Transp./Poss. Cntl. Sub.	16 months
2-24-04	CASC Tulare	VC 23152(b) – DUI VC 12500 – Drive w/o License	8 days
7-6-98	USDC EDCA	8 U.S.C. 1325 – Illegal Entry	27 months
10-6-92	CASC Tulare	PC 470 – Forgery	90 days
5-31-89	CASC Tulare	PC 484(a)/666 – Petty Theft w/Priors 7-23-90 Probation Revoked	240 days 2 years

C. INSTANT OFFENSE

On March 23, 2008, at approximately 6:05 p.m., Border Patrol Agent Marcos Manzano was conducting line watch operations in the Imperial Border Patrol Station area of operations. At that time, he saw Defendant running north in an area known as “Campos Ditch.” The area is approximately three miles west of the San Ysidro, California, Port of Entry and 100 yards north

1 of the International border between the United States and Mexico. Agent Manzano stopped the
2 Defendant, identified himself as a Border Patrol agent, and conducted an immigration inspection.
3 Defendant then freely admitted to being a Mexican citizen without documents to be in the United
4 States legally. Defendant was subsequently arrested and transported to the Imperial Beach station
5 for processing.

6 The Defendant was subsequently advised of his Miranda rights, which he elected to waive.
7 Defendant then admitted to being a citizen of Mexico without documents to be in the United States
8 legally. He further admitted that he had been previously deported.

9 III

10 MOTION FOR RECIPROCAL DISCOVERY

11 The United States hereby moves for reciprocal discovery from Defendant. To date
12 Defendant has not provided any. The United States, pursuant to Rule 16 of the Federal Rules of
13 Criminal Procedure, requests that Defendant permit the United States to inspect, copy, and
14 photograph any and all books, papers, documents, photographs, tangible objects, or make copies
15 of portions thereof, which are within the possession, custody or control of Defendant and which
16 Defendant intends to introduce as evidence in his case-in-chief at trial.

17 The United States further requests that it be permitted to inspect and copy or photograph
18 any results or reports of physical or mental examinations and of scientific tests or experiments
19 made in connection with this case, which are in the possession or control of Defendant, which
20 Defendant intends to introduce as evidence-in-chief at the trial, or which were prepared by a
21 witness whom Defendant intends to call as a witness. Because the United States will comply with
22 Defendants' requests for delivery of reports of examinations, the United States is entitled to the
23 items listed above under Rule 16(b)(1) of the Federal Rules of Criminal Procedure. The
24 Government also requests a written summary of the names, anticipated testimony, and bases for
25 opinions of experts the defendant intends to call at trial under Rules 702, 703, and 705 of the
26 Federal Rules of Evidence.

1 The United States also requests that the Court make such order as it deems necessary under
2 Rules 16(d)(1) and (2) to ensure that the United States receives the discovery to which it is entitled.

3 In addition, Rule 26.2 of the Federal Rules of Criminal Procedure requires the production
4 of prior statements of all witnesses, except a statement made by defendant. This rule thus provides
5 for the reciprocal production of Jencks statements. The time frame established by the rule requires
6 the statement to be provided after the witness has testified. To expedite trial proceedings, the
7 United States hereby requests that Defendant be ordered to supply all prior statements of defense
8 witnesses by a reasonable date before trial to be set by the Court. Such an order should include
9 any form in which these statements are memorialized, including but not limited to, tape recordings,
10 handwritten or typed notes and/or reports.

11 IV

12 MOTION FOR FINGERPRINT EXEMPLARS

13 As part of its burden of proof at trial, the Government must prove beyond a reasonable
14 doubt that Defendant is the same person who was previously deported from the United States.
15 Defendant's warrants of deportation and related documents bear fingerprints to verify his
16 identity. In order to meet our burden of proof, the United States anticipates calling a certified
17 fingerprint examiner to obtain fingerprint exemplars from Defendant and compare those with
18 the fingerprints on the immigration documents.

19 Defendant has no privilege against providing fingerprint exemplars. The Fifth
20 Amendment privilege is limited to communications or testimonial evidence. Schmerber v.
21 California, 384 U.S. 757, 763-64 (1966). The Government's use of identifying physical
22 characteristics, such as fingerprint exemplars, does not violate a defendant's Fifth Amendment
23 rights. See, e.g., United States v. De Palma, 414 F.2d 394, 397 (9th Cir. 1969); Woods v.
24 United States, 397 F.2d 156 (9th Cir. 1968). Compare United States v. Jackson, 886 F.2d 838,
25 845 n.8 (7th Cir. 1989) ("There is no doubt that requiring a defendant to give a handwriting
26 specimen does not violate his fifth amendment privilege against self-incrimination since the
27

1 privilege reaches only compulsion of a defendant's communication."). Accordingly, the Court
2 should order that Defendant provide fingerprint exemplars to the Government's fingerprint
3 expert.

4 **V.**

5 **LEAVE TO FILE FURTHER MOTIONS**

6 Should new information or legal issues arise, the United States respectfully requests the
7 opportunity to file such further motions as may be appropriate.

8 **VI.**

9 **CONCLUSION**

10 For the foregoing reasons, the Government respectfully requests that its motions for
11 reciprocal discovery, fingerprint exemplars and leave to file further motions be granted.

12 DATED: May 12, 2008.

13 Respectfully submitted,

14 KAREN P. HEWITT
15 United States Attorney

16 s/ Aaron B. Clark
17 AARON B. CLARK
18 Assistant United States Attorney
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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

UNITED STATES OF AMERICA,

Case No. 08CR1261-LAB

Plaintiff

CERTIFICATE OF SERVICE

v.

MARTIN OROSCO-IBARRA,

Defendant(s).

IT IS HEREBY CERTIFIED THAT:

I, AARON B. CLARK, am a citizen of the United States and am at least eighteen years of age. My business address is 880 Front Street, Room 6293, San Diego, California 92101-8893.

I am not a party to the above-entitled action. I have caused service of UNITED STATES' MOTIONS on the following parties by electronically filing the foregoing with the Clerk of the District Court using its ECF System, which electronically notifies them.

1. John C. Ellis

I declare under penalty of perjury that the foregoing is true and correct.

Executed on May 12, 2008.

s/ Aaron B. Clark
AARON B. CLARK